IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.736 OF 2006

Shankar Yesu Tatkare (deceased)
through his legal heirs ...Appellants
Vs.
Ganu Dagadu Ghole & Anr. ...Respondents

Shri P.B. Shah for the Appellants.

CORAM : A. S. OKA, J.
DATE : AUGUST 04, 2006.

P.C.:

1. The Appellants are the legal representatives of the original Plaintiff. The second Respondent is admittedly the real sister of the original Plaintiff. The suit was filed on the basis of ownership for possession on the ground that the second Respondent was in permissive possession. The defence of the second Respondent was that the property was given to her as "andan". The Trial Court held that the original Plaintiff has established ownership. However, the suit was dismissed on the ground that the licence was not revoked. The Appeal is also dismissed.

2. Shri Shah appearing for the Appellant submitted that the Appellate Court erroneously disturbed the finding of the Trial Court on the issue

of ownership of the original Plaintiff. He submitted that the second Respondent failed to establish the case made out in the written statement and therefore, the decree should have followed.

3. In paragraph No.10 the Appellate Court has observed thus:

> . "It is not disputed that the suit land was originally owned by Yesu Tatkare, father of plaintiff and defendant no.2. It is revealed from the evidence that Yesu Tatkare, father of plaintiff and defendant no.3 died sometime in 1960 i.e. after 1956."

Shri Shah submitted that aforesaid concession on the part of the Advocate appearing for the Appellants has been wrongly recorded. The Appellate Court has decided the Appeal in the year 1995. Nothing has prevented the Appellants from approaching the same court for necessary clarification. Thus, admitted position as reflected from the judgment of the Appellate Court is that the property was owned by the father of the original Plaintiff who died after coming

into force of Hindu Succession Act, 1956. Therefore, the Appellate Court held that the Respondent No.2 being the sister of the original Plaintiff had a share in the property. No fault can be found with the said finding of the Appellate Court. No substantial question of law arises. Second Appeal is dismissed.

No orders as to costs.

JUDGE